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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of:)
)
Petition of LCI and CompTel for)
Expedited Rulemaking To Establish) RM 9101
Reporting Requirements and)
Performance and Technical Standards)
for Operations Support Systems)

AMERITECH'S INITIAL COMMENTS IN OPPOSITION TO PETITION

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AMERITECH'S INITIAL COMMENTS
IN OPPOSITION TO PETITION

The Ameritech Operating Companies¹ ("Ameritech"), in accordance with the Public Notice released in this docket on June 10, 1997 ("Public Notice"), respectfully offer the following Initial Comments in opposition to the Petition for Expedited Rulemaking ("Petition") filed on May 30, 1997 by LCI International Telecom Corp. ("LCI") and the Competitive Telecommunications Association ("CompTel")(collectively referred to as the "Petitioners").

¹ The Ameritech Operating Companies are: Illinois Bell Telephone Company ("Ameritech Illinois"), Indiana Bell Telephone Company, Incorporated ("Ameritech Indiana"), Michigan Bell Telephone Company ("Ameritech Michigan"), The Ohio Bell Telephone Company ("Ameritech Ohio"), and Wisconsin Bell, Inc. ("Ameritech Wisconsin").

I.

INTRODUCTION AND SUMMARY

The Petitioners seek to create new federal standards for evaluating whether incumbent local exchange carriers ("ILECs") have satisfied their obligation to provide non-discriminatory access to their operations support system ("OSS") functions.² According to the Petitioners, ILECs then would be obligated to comply with these new federal standards in order "to meet the OSS requirements of the Commission's First Report and Order in CC Docket No. 96-98"³ -- even though that Order was released nearly one year ago.

More specifically, Petitioners ask the Commission to enter an order requiring that:

each ILEC disclose (a) each OSS function for which it has established performance standards for itself; and (b) each OSS function for which it has not established performance standards for itself, and

where the ILEC has established performance standards for itself, that the ILEC further disclose precisely what those performance standards are, together with appropriate historical data and measurement criteria.

² 47 C.F.R. Sections 51.319 and 51.319(f) (quoted *infra* at 15).

³ Petition at i.

The Petitioners further request that the Commission thereafter:

determine the appropriate minimum performance standards for each OSS function (including those functions for which the ILEC has not established performance standards for itself), so that each ILEC will be in compliance with the OSS requirements of the Order

and

establish any related OSS requirements (e.g., appropriate beta testing to ensure operability and scalability) that must be met by an ILEC in both the resale and unbundled environments, including the network platform.

Finally, the Petitioners ask “that the Commission model these performance standards on the standards formulated by the Local Competition Users Group” (“LCUG”), which are attached as Appendices A and B to the Petition.⁴

It is not necessary -- in fact, it would be inappropriate -- for the Commission to initiate the rulemaking requested in the Petition. The Commission already decided in its First Report and Order,⁵ and then

⁴ Petition at pp. 87-88, “Conclusion/Relief Requested”.

⁵ *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, *rel.* August 8, 1996.

reaffirmed in its Second Order on Reconsideration,⁶ that it would not adopt national standards for access to OSS functions. Instead, the Commission decided to rely on voluntary negotiations and, if necessary, state arbitrations under Section 252, to establish technical standards -- and implementation details such as performance measurements -- for access to OSS functions.

Ameritech and the state regulatory commissions in the Ameritech region have stepped up to that responsibility. Ameritech has developed, tested, and implemented access to its OSS functions. All of Ameritech's OSS interfaces are operationally ready to process data, and many of them are already doing so on a commercial basis. In addition, Ameritech measures and reports on a monthly basis the performance of its OSS interfaces in terms of cycle times, reliability (accuracy) and availability. These performance measurements are included in interconnection agreements which were found to be "consistent with federal and state law" and "in the public interest" by state regulatory commissions that approved those agreements.

⁶ *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, Second Order on Reconsideration, *rel.* December 13, 1996.

Under these circumstances, it would be unreasonable for this Commission to establish another layer of OSS-related performance measurements or reporting requirements through federal rulemaking. Nevertheless, if the Commission does decide to adopt OSS-related performance measurements,⁷ the Commission should not adopt any such requirements that impose obligations that go beyond what Ameritech already has agreed to, and all such requirements should be effective only on a prospective basis so as not to impede on-going Section 271 proceedings.

⁷ Performance measurements refer to what gets measured. Under no circumstances should this Commission establish specific standards for performance. That is for the parties to establish through voluntary negotiations, or for state regulatory commissions to establish through arbitration, using the Section 252 process.

II.

**THE COMMISSION SHOULD CONTINUE TO
RELY ON THE PARTIES AND, IF NECESSARY, THE
STATE COMMISSIONS, TO ESTABLISH OSS
PERFORMANCE MEASUREMENTS AND REPORTING
REQUIREMENTS THROUGH THE PROCESS
CONGRESS CREATED IN SECTION 252 OF THE 1996 ACT.**

In its December 13, 1996 Second Order on Reconsideration, the Commission refused to extend the January 1, 1997 effective date of its rule requiring ILECs to provide access to their OSS functions, but instead looked to the states to prescribe, as necessary, the implementation details for OSS access. The Commission specifically noted “that several state arbitrations completed thus far [*i.e.*, as of December 13, 1996] have adopted schedules that require substantial implementation of access to OSS functions by January 1, 1997.”⁸ The Commission also noted that “it is apparent from arbitration agreements and *ex parte* submissions that access to OSS functions can be provided without national standards.”⁹ Therefore, rather than creating national standards for access to an ILEC’s OSS functions, the Commission held that “the actual provision of access to OSS functions by an incumbent LEC must be governed by an implementation schedule established through negotiation or arbitration.”¹⁰ This reliance on

⁸ Second Order on Reconsideration at par. 10.

⁹ Second Order on Reconsideration at par. 13.

¹⁰ Second Order on Reconsideration at par. 8.

negotiations and arbitrations at the state level was eminently reasonable, and entirely consistent with Section 252(e)(1) of the 1996 Act.¹¹ Petitioners may not be completely satisfied with the outcome of that Section 252 process, but present no evidence the process, itself, is not working as the Congress and this Commission intended. Therefore, the Commission should continue to rely on the parties and, if necessary, the state commissions, to establish performance measurements and reporting requirements for access to an ILEC's OSS functions.

III.

AMERITECH PROVIDES NONDISCRIMINATORY ACCESS TO ITS OSS FUNCTIONS.

In its Public Notice, the Commission asks for information about "the status of OSS for resale and for unbundled network elements" and specifically "the status of each OSS function (pre-ordering, ordering, provisioning, maintenance and repair, and billing)."¹² Ameritech provides requesting carriers with nondiscriminatory access to each of these OSS

¹¹ 47 U.S.C. Section 252(e)(1) ("Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission."). Indeed, the Petitioners acknowledge the role of the state interconnection agreements by including the "Core Principles of Interconnection Agreements" in their document included in their Appendices and entitled Foundation For Local Competition: Operations Support Systems Requirements For Network Platform And Total Services Resale, February 12, 1997, Prepared by: Local Competition Users Group (LCUG); Membership: AT&T, MCI, Sprint, WorldCom and LCI.

¹² Public Notice at 2.

functions for resale and unbundled network elements, as explained in detail in Ameritech Michigan's recent Section 271 Application. *In the Matter of Application by Ameritech Michigan Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Michigan*, CC Docket No. 97-137, Brief in Support of Application by Ameritech Michigan for Provision of In-Region, InterLATA Services in Michigan, filed May 21, 1997, pp. 21-30, and accompanying Affidavits of Joseph A. Rogers, Rachel Foerster and Robert H. Meixner; Reply Brief in Support of Application by Ameritech Michigan for Provision of In-Region, InterLATA Services in Michigan, filed July 7, 1997, pp. 5-12, and accompanying Reply Affidavit of Joseph A. Rogers, Joint Reply Affidavit of J. Russell Gates and Rod Thomas, and Joint Reply Affidavit of John B. Mayer, Warren L. Mickens and Joseph A. Rogers, pp. 2-14. Rather than restate all of this information, Ameritech incorporates the above-referenced material by reference herein.

IV.

REASONABLE PERFORMANCE MEASUREMENTS AND REPORTING REQUIREMENTS FOR AMERITECH'S OSS FUNCTIONS ALREADY ARE IN PLACE.

The Commission also asks in the Public Notice whether parties are subject to OSS performance standards and reporting requirements as a result of negotiation or arbitration.¹³ For Ameritech, the answer is “yes,” as explained in detail in Ameritech Michigan’s recent Section 271 Application. *In the Matter of Application by Ameritech Michigan Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Michigan*, CC Docket No. 97-137, Brief in Support of Application by Ameritech Michigan for Provision of In-Region, InterLATA Services in Michigan, filed May 21, 1997, pp. 30-34, and accompanying Affidavit of Warren Mickens; Reply Brief in Support of Application by Ameritech Michigan for Provision of In-Region, InterLATA Services in Michigan, filed July 7, 1997, pp. 14-18, and accompanying Reply Affidavit of Warren L. Mickens and Joint Reply Affidavit of John B. Mayer, Warren L. Mickens and Joseph A. Rogers, pp. 14-33. Again, rather than re-state all of this information, Ameritech incorporates the above-referenced material by reference herein. As this material shows, Ameritech demonstrates that it

¹³ Public Notice at 2.

provides nondiscriminatory access to its OSS functions through reasonable performance measurements that are reported on a regular basis.

V.

IT IS NOT NECESSARY FOR THE COMMISSION TO ADOPT ANY OSS-RELATED PERFORMANCE MEASUREMENTS OR REPORTING REQUIREMENTS BEYOND THOSE THAT HAVE BEEN NEGOTIATED OR ARBITRATED THROUGH THE SECTION 252 PROCESS.

Ameritech's performance measures and reporting obligations -- including those for OSS performance -- were the subject of intense negotiations and were vigorously contested in Section 252 arbitrations of interconnection agreements. For example, in its November 26, 1996 order provisionally approving the AT&T Agreement, the Michigan Public Service Commission ("MPSC") directed the parties to resume negotiations on the performance standards issue and to resubmit proposals within thirty days.¹⁴ The parties did so, and subsequently submitted an agreement containing the renegotiated performance measurements. Those agreements contain specific OSS performance standards, including a report on OSS timeliness (percentage of transactions completed on time for pre-ordering, ordering, maintenance/repair, and billing); OSS reliability (percentage of failed transactions, incorrect responses, and unprovided transactions for pre-

¹⁴ MPSC Docket No. U-11151/11152, November 26, 1996 Order, p. 22.

ordering, ordering, maintenance/repair, and billing); and OSS availability (percentage of time each interface is available). The MPSC approved these measurements, along with the rest of the agreement, on April 4, 1997, stating that "the agreement is consistent with federal and state law, and is in the public interest."¹⁵

Performance measurement and reporting was extensively litigated in Section 252 arbitrations and other proceedings before the Illinois Commerce Commission, as well. Some of the parties in the Illinois Commission's currently pending Section 271 checklist compliance investigation of Ameritech Illinois "argue[d] for the establishment of a detailed set of performance measurements that purportedly would serve to monitor Ameritech's checklist compliance."¹⁶ But, the Hearing Examiner concluded:

These issues have already been addressed in negotiations between the parties and in the AT&T and MCI arbitrations. Moreover, even assuming AT&T's proposals were properly raised in this proceeding, we find that they lack merit and should be rejected.¹⁷

¹⁵ MPSC Docket No. U-11151/11152, April 4, 1997 Order, p. 5.

¹⁶ Illinois HEPO, June 20, 1997 at 98, par. A., Positions of the Parties.

¹⁷ *Id.* at 99, par. A, Commission Conclusion.

Thus, not only has the Commission looked to the states, as is necessary, to establish performance measurements, including measurements for OSS performance, but interconnection agreements containing such measurements in fact have been approved by state commissions based on a finding that the agreements were "consistent with federal and state law" and "in the public interest." And, as the Illinois Hearing Examiner held, it is inappropriate for dissatisfied parties to try to re-litigate performance measurements in Section 271 checklist compliance investigations.¹⁸ It is equally inappropriate for Petitioners to try to do so through federal rulemaking.¹⁹

If a CLEC is not satisfied with the performance measurements, including OSS performance measurements, contained in its interconnection agreement with an ILEC, then the CLEC can invoke its remedies under the 1996 Act. Specifically, if the CLEC's dissatisfaction is due to a state commission's failure to act to carry out its responsibility with respect to a Section 252 interconnection agreement, then it can ask this Commission to

¹⁸ The LCUG proposal that Petitioners recommend here was modeled after AT&T's proposal the Illinois Hearing Examiner rejected in the Illinois Commission's investigation of Ameritech Illinois' 271 compliance.

¹⁹ Given that interconnection agreements contain prices based on costs, it would be especially inappropriate to re-litigate the performance measurements and reporting requirements contained in those agreements without looking at the corresponding costs of the new obligations.

preempt and assume the state commission's responsibility.²⁰ On the other hand, if the state commission makes a determination about performance measurements in connection with its review of a Section 252 interconnection agreement, and a party to the agreement considers itself aggrieved by that determination, the party can bring an action in an appropriate Federal district court.²¹ However, parties who are dissatisfied with the performance measurements in their state-approved interconnection agreements should not be allowed to circumvent the entire Section 252 process through federal rulemaking.

Instead, the Commission should continue to rely on the parties or, if necessary, the state commissions, to establish OSS performance measurements and reporting requirements through the process Congress created in Section 252 of the 1996 Act.

²⁰ 47 U.S.C. Section 252(e)(5). Ameritech does not understand Petitioners here to be requesting that the Commission preempt and/or overrule any state commission decisions, rendered under Section 252, which addressed performance measurements or reporting requirements. However, that may be the result given the disparity between the OSS-related performance measurements recommended in the Petition and those contained in interconnection agreements approved by the states as "consistent with federal and state law" and "in the public interest." *Compare e.g.*, Petition at ii (OSS systems should be operational 99.7% of the time) *with* the 95% network reliability level in Section 10.13.2(a) of Ameritech Michigan's interconnection agreement with AT&T.

²¹ 47 U.S.C. Section 252(e)(6).

VI.

**IF THE COMMISSION GRANTS PETITIONERS' REQUEST,
AND BEGINS A RULEMAKING TO CONSIDER NEW
FEDERAL PERFORMANCE MEASUREMENTS AND
REPORTING REQUIREMENTS FOR ACCESS TO OSS
FUNCTIONS, ANY SUCH RULE SHOULD BE EFFECTIVE
ONLY ON A PROSPECTIVE BASIS SO AS NOT TO
IMPEDE ON-GOING SECTION 271 PROCEEDINGS.**

To their credit, the Petitioners at least are candid about the real agenda behind their Petition:

This petition seeks an expedited rulemaking to establish the performance standards that must be met for ILECs to meet the OSS requirements of the Commission's First Report and Order in CC Docket No. 96-98.²²

In other words, the Petitioners not only would have the Commission enact federal performance measurements for access to OSS functions even though Section 252 relegated that matter to the states, but apparently also want the Commission to make compliance with these "yet to be determined" federal standards a Section 271 checklist requirement. That would be patently unlawful.

²² Petition at i (parenthetical omitted)(emphasis added).

The OSS rule established in the First Report and Order is relatively simple and straight-forward. 47 C.F.R. Section 51.319 says:

An incumbent LEC shall provide nondiscriminatory access in accordance with Section 51.311 of this part and section 251(c)(3) of the Act to the following network elements on an unbundled basis to any requesting telecommunications carrier for the provision of a telecommunications service:

...

(f) Operations Support Systems Functions

(1) Operations support systems functions consist of pre-ordering, ordering, provisioning, maintenance and repair, and billing functions supported by an incumbent LEC's databases and information.

(2) An incumbent LEC that does not currently comply with this requirement shall do so as expeditiously as possible, but, in any event, no later than January 1, 1997[.]

The reference in the OSS rule to Section 251(c)(3) of the 1996 Act is important because the Section 271(c)(2)(B)(ii) checklist requires compliance with Section 251(c)(3). In other words, an ILEC that does not fully comply with the Commission's OSS rule arguably does not fully comply with Section 271(c)(2)(B)(ii) of the checklist.

However, the Commission explained in paragraph 525 of the text of the First Report and Order what an ILEC must do in order to fully comply with the Commission's rule on providing access to its OSS functions:

in order to comply fully with section 251(c)(3) an incumbent LEC must provide, upon request, nondiscriminatory access to operations support systems functions for pre-ordering, ordering, provisioning, maintenance and repair, and billing of unbundled network elements under section 251(c)(3) and resold services under section 251(c)(4).

(emphasis added). Thus, the Commission's OSS rule requires nondiscriminatory access to OSS functions. There is nothing in the rule, or the Commission's explanation about what an ILEC must do in order "to comply fully" with the rule, that prescribes any federal performance measurements or reporting requirements for determining whether such nondiscriminatory access to OSS functions has been provided, and Petitioners admit as much.²³ In fact, some parties asked for clarification of the First Report and Order because it did not impose any special OSS reporting requirements on ILECs.²⁴ Creating such requirements now, as a matter of federal law, nearly one year after the original OSS rule was

²³ Petition at 7 ("We recognize that the Commission's Orders require 'nondiscriminatory' access to OSS, and do not presently adopt particular performance standards or benchmarks.")

²⁴ WorldCom Petition at 8-10. Even WorldCom, however, recognized in its Petition that any such performance standards should be "part of the agreement between ILECs and new entrants subject to arbitration by state commissions" WorldCom Petition at 9.

established without those requirements, and then making satisfaction of those requirements a Section 271 checklist compliance obligation, would violate an ILEC's right to procedural due process guaranteed by the United States Constitution.

If Petitioners are successful in their attempt to create retroactive OSS standards through federal rulemaking, the effect on ILECs filing for in-region interLATA authority under Section 271 will be an OSS obligation that goes well beyond what the Commission originally said that an ILEC must do in order to fully comply with Section 251(c)(3). That would be a not so subtle extension of the terms in the Section 271 checklist and a violation of Section 271(d)(4) of the 1996 Act.

Given the obvious legal infirmities with their Petition, Petitioners' real intent may be to simply put all Section 271 applications indefinitely on hold. Under their approach: (1) the Commission puts their Petition for Rulemaking out for comment, (2) initial comments are filed, (3) reply comments are filed, (4) the Commission considers the matter, (5) the Commission issues a Notice of Proposed Rulemaking on federal performance standards for access to OSS functions, (6) initial comments on the NPRM are filed, (7) reply comments on the NPRM are filed, (8) the

Commission considers the matter, (9) the Commission issues rules containing federal performance measurements and reporting requirements for access to OSS functions, (10) parties to interconnection agreements modify those agreements to include the new federal performance standards, and then (11) the ILECs begin collecting new performance data necessary to demonstrate compliance with the Commission's new measurement standards for nondiscriminatory access to OSS functions. This entire process could take years, an especially odd result given the ILECs' legal obligation to comply with the Commission's OSS rule as of January 1, 1997, and the Commission's refusal to extend that deadline until national standards are established for access to OSS functions.

Chairman Hundt recently said that:

The power to enter the long distance market lies in the hands of the Bell Companies if they have the will, the law makes clear the way.²⁵

²⁵ Separate Statement of Chairman Reed E. Hundt, *In the Matter of Application by SBC Communications Inc., Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Oklahoma*, CC Docket No. 97-121, Memorandum Opinion and Order, *rel.* June 26, 1997, at 2.

Under Petitioners' approach, however, "the way" is not "clear" because the law (*i.e.*, the Commission's OSS rule and the Section 271 checklist requirement) continues to be a moving target.

It is not necessary for the Commission to adopt any OSS-related performance measurements or reporting requirements beyond those that have been negotiated or arbitrated through the Section 252 process. But, if the Commission decides to adopt such a rule, the rule should be effective only on a prospective basis so as not to interfere with on-going Section 271 proceedings.

VII.

CONCLUSION

If the Commission grants the Petition in this docket, it will undermine negotiations and arbitrations at the states in Section 252 proceedings, and would muddle "the way" to checklist compliance for those

ILECs who "have the will" to comply with the Commission's current rule for nondiscriminatory access to OSS functions.

The Petition should be denied.

Respectfully submitted,

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